

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
v.	§	Criminal No. P-16-CR-424 RAJ
	§	
ANDREW MARION KOWALIK,	§	
Defendant.	§	

UNITED STATES' MOTION FOR FINAL JUDGMENT OF FORFEITURE

TO THE HONORABLE ROBERT JUNELL, SENIOR U.S. DISTRICT JUDGE:

NOW COMES the United States of America, by and through the U.S. Attorney for the Western District of Texas, and files this Motion for Final Judgment of Forfeiture pursuant to the provisions of FED. R. CRIM. P. 32.2(c)(2) and 21 U.S.C. §§ 853(n)(1)-(7). In support thereof, the United States respectfully offers the following:

I. STATEMENT OF THE CASE

A. Criminal Proceedings.

On October 13, 2016, a two-count Indictment was returned against Defendant ANDREW MARION KOWALIK, charging him with violations of 18 U.S.C. § 2314 (*i.e.* Interstate Transportation of Stolen Goods) and 18 U.S.C. § 545 (*i.e.* Smuggling Goods into the United States). (Doc. 1). The Indictment also contained a Notice of Demand for Forfeiture. (Doc. 1 at 3-4).

On November 29, 2016, Defendant pled guilty to Count Two of the Indictment pursuant to a written plea agreement. (Docs. 17, 19). The written Plea Agreement memorializes Defendant's agreement to immediately and voluntarily forfeit all right, title, and interest in all items seized from him which include the following:

- Wooden Display case 1-PM-B containing 81 Mexican Prehistoric Archaeological Artifacts (arrowheads);

- Wooden Display case 2-PM-B containing 429 Mexican Prehistoric Archaeological Artifacts (arrowheads); and
- Wooden Display case 8-TS-A containing 9 Mexican Prehistoric Archaeological Artifacts (arrowheads)

(hereinafter referred to collectively as “Subject Properties”). (*See* Doc. 17 at 6).

The agreed Factual Basis entered into the record (Doc. 17 at 1-2) establishes that the Subject Properties are in violation of 18 U.S.C. § 545 and are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2)(B); 18 U.S.C. § 545 as made applicable to criminal forfeiture by 28 U.S.C. § 2461(c); and 19 U.S.C. § 1595a(c)(1)(A).

On February 13, 2017, Defendant was sentenced to five years of probation, and the Subject Properties were included in his Judgment in a Criminal Case. (Doc. 30 at 6).

B. Forfeiture Proceedings.

On February 14, 2017, the Court entered a Preliminary Order of Forfeiture, forfeiting Defendant’s right, title, and interest in the Subject Properties. (Doc. 28).

Pursuant to said order, the Notice of Forfeiture was posted on an official government internet website (www.forfeiture.gov) for at least 30 consecutive days, beginning on February 17, 2017, and ending on March 18, 2017, as required by FED. R. CRIM. P. 32.2(b)(6)(C). The Declaration of Publication was filed on March 23, 2017. (Doc. 32).

No known potential petitioners exist; therefore, any and all other potential petitioners have been adequately served by posting the notice of forfeiture on an official government website as stated above.

Court records for the United States District Clerk’s Office, Pecos Division, reveal that no petitions were filed in this cause by any third parties against the Subject Properties pursuant to the

provisions of 21 U.S.C. §§ 853(n)(1)-(7) and FED. R. CRIM. P. 32.2, and the time for filing any such petitions has expired. Accordingly, this matter is ready for final disposition.

II. GROUNDS FOR MOTION

The United States hereby moves the Court to find that it has proven by a preponderance of the evidence the nexus between the Subject Properties and the above-described violation of 18 U.S.C. § 545 by virtue of the Factual Basis and Defendant's guilty plea. (Doc. 17). The United States further moves the Court to find that Defendant ANDREW MARION KOWALIK has an interest in the Subject Properties.

The United States further moves the Court to order that any and all right, title, and interest of Defendant ANDREW MARION KOWALIK in the Subject Properties be forfeited to the United States.

The United States further moves the Court to order that any and all right, title, and interest of any and all potential petitioners in the Subject Properties be held in default, and be forfeited to the United States.

The United States further moves this Court to order that the Department of Homeland Security Investigations (HSI) and/or their designated agents shall dispose of the Subject Properties in accordance with law.

The United States further moves this Court to order that all terms and provisions contained in this Court's Preliminary Order of Forfeiture entered on February 14, 2017 (Doc. 28), in so much as may be applicable and consistent with this Order, shall remain in full force and effect.

III. CERTIFICATE OF CONFERENCE

No conference is necessary as the Court's Preliminary Order of Forfeiture (Doc. 28) forfeited Defendant's right, title, and interest in the Subject Properties at the time of sentencing.

See United States v. De Los Santos, 260 F.3d 446, 448 (5th Cir. 2001) (explaining that “[a] preliminary order of forfeiture is a final judgment as to the rights of a defendant to forfeited property”); *United States v. Torres*, 450 F.App’x 361, 362 (5th Cir. 2011) (reasoning that the defendant’s property rights are “extinguished upon the entry of the preliminary order of forfeiture at the time of the criminal judgment”).

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the United States moves this Court for entry of a Final Judgment of Forfeiture.

Respectfully submitted,

RICHARD L. DURBIN, JR.
UNITED STATES ATTORNEY

By: /s/ Daniel M. Castillo

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ATTORNEYS FOR PLAINTIFF,
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2017, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Terry G. Collins
Law Office of Terry G. Collins
PO Box 1988
Rockport, Texas 78381
(Attorney for Defendant Andrew Marion Kowalik)

/s/ Daniel M. Castillo

DANIEL M. CASTILLO
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

**ANDREW MARION KOWALIK,
Defendant.**

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Criminal No. P-16-CR-424 RAJ

FINAL JUDGMENT OF FORFEITURE

Came on to be considered the **United States’ Motion for Final Judgment of Forfeiture**, pursuant to the provisions of FED. R. CRIM. P. 32.2(c)(2) and 21 U.S.C. §§ 853(n)(1-7), and this Court being fully and wholly apprised in all its premises finds that the United States has proven by a preponderance of the evidence a nexus between the below-described properties and the violation of 18 U.S.C. § 545, and that Defendant ANDREW MARION KOWALIK has an interest in the below-described properties. Said Motion is meritorious and should be, and hereby is, in all things GRANTED; IT IS THEREFORE

ORDERED that all right, title, and interest of Defendant ANDREW MARION KOWALIK in certain properties, namely:

- Wooden Display case 1-PM-B containing 81 Mexican Prehistoric Archaeological Artifacts (arrowheads);
- Wooden Display case 2-PM-B containing 429 Mexican Prehistoric Archaeological Artifacts (arrowheads); and
- Wooden Display case 8-TS-A containing 9 Mexican Prehistoric Archaeological Artifacts (arrowheads)

(hereinafter referred to as “Subject Properties”) be, and hereby are FORFEITED to the United States; and IT IS FURTHER

ORDERED that any and all right, title, and interest of any and all potential petitioners in the Subject Properties be, and hereby are, held in default and be, and hereby are, forfeited to the United States; and IT IS FURTHER

ORDERED that the Department of Homeland Security Investigations (HSI) and/or its designated custodians, shall dispose of the Subject Properties in accordance with law; and IT IS FURTHER

ORDERED that all terms and provisions contained in this Court's Preliminary Order of Forfeiture entered on February 14, 2017 (Doc. 28), in so much as may be applicable and consistent with this Order, shall remain in full force and effect.

SIGNED on this the _____ day of _____, 2017.

ROBERT JUNELL
SENIOR U.S. DISTRICT JUDGE